

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT WINCHESTER

KENNETH CLAYTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No: 4:10-CV-73
	)	MATTICE/CARTER
MICHAEL S. ASTRUE,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION

I. Introduction

Plaintiff's motion for attorney's fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. §2412(d) (Doc. 26), is before the undersigned having been referred by the District Court for a report and recommendation pursuant to 28 U.S.C. §636(b) and Fed. R. Civ. P. 72(b).

II. Discussion

In order to recover attorney's fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. §2412(d), four conditions must be met:

- (1) The plaintiff must be a prevailing party;
- (2) The application for attorney's fees, including an itemized justification for the amount requested, must be filed within 30 days of the final judgment in the action;
- (3) No special circumstances warranting denial of fees may exist;
- (4) The government's position must be without substantial justification.

28 U.S.C. §2412(d); *see also, Damron v. Commissioner of Social Security*, 104 F.3d 853, 855 (6th Cir. 1997).

In the instant case, Plaintiff seeks fees in the amount of \$4,131.23. The Commissioner has filed an objection to the amount of fees to be allowed but otherwise does not object to allowing fees under the EAJA in the lesser amount of \$4,032.00. Therefore, the Commissioner does not assert the decision below was not substantially justified but does take issue with the reasonableness of the fees sought. Having reviewed the record and the plaintiff's itemized billing, the undersigned finds plaintiff has met all requirements to receive EAJA fees. The plaintiff concedes the rates set forth by the Commissioner are the correct fees. The rates charged by attorneys, as modified, and is agreed by the parties, are consistent with fees allowed in previous cases and are properly computed, as rounded to the nearest whole dollar.

### III. Conclusion

Accordingly, it is RECOMMENDED plaintiff's motion for attorney's fees under the Equal Access to Justice Act, 28 U.S.C. §2412(d), be GRANTED.

It is further RECOMMENDED that plaintiff be awarded attorney's fees in the amount of \$4,032.00. In light of the assignment of EAJA fees, I RECOMMEND the Order approving fees provide for the check to be paid to Plaintiff's counsel.<sup>1</sup>

S / William B. Mitchell Carter

UNITED STATES MAGISTRATE JUDGE

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Any objections to this Report and Recommendation must be served and filed within fourteen (14) days after service of a copy of this recommended disposition on the objecting party. Such objections must conform to the requirements of Rule 72(b) of the Federal Rules of Civil Procedure. Failure to file objections within the time specified waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 88 L.Ed.2d 435, 106 S.Ct. 466 (1985). The district court need not provide *de novo* review where objections to this report and recommendation are frivolous, conclusive or general. *Mira v. Marshall*, 806 F.2d 636 (6th Cir. 1986). Only specific objections are reserved for appellate review. *Smith v. Detroit Federation of Teachers*, 829 F.2d 1370 (6th Cir. 1987).